

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IMA S.P.A. and FILLSHAPE S.R.L.,
Petitioners,

v.

INDAG GESELLSCHAFT FÜR INDUSTRIEBEDARF
MBH & CO. BETRIEBS KG,
Patent Owner.

Case IPR2016-01153
Patent 7,648,017 B2

Before PHILLIP J. KAUFFMAN, MEREDITH C. PETRAVICK, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

GOODSON, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

IMA S.p.A. and FillShape S.r.l. (“Petitioners”) filed a Petition (Paper 3, “Pet.”) requesting *inter partes* review of claims 1–16 of U.S. Patent No. 7,648,017 B2 (Ex. 1004, “the ’017 patent”). Indag Gesellschaft für Industriebedarf mbH & Co. Betriebs KG (“Patent Owner”) filed a Preliminary Response (Paper 10, “Prelim. Resp.”).

We have authority to determine whether to institute *inter partes* review. *See* 35 U.S.C. § 314; 37 C.F.R. § 42.4(a). Institution of an *inter partes* review is appropriate only if we determine that the information presented in the Petition and the Preliminary Response shows “a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). Based on our review of the record, and for the reasons described below, we do not institute an *inter partes* review.

A. Related Matters

The parties apprise us that the following two pending District Court proceedings involve the ’017 patent: *FillShape S.r.L. v. Indag GmbH*, Case No. 3:16-cv-01216 and *Indag GmbH v. FillShape S.r.L.*, Case No. 3:16-cv-01354, both in the U.S. District Court for the District of Puerto Rico. Pet. 2; Paper 8, 1. Petitioners provide a summary of the procedural history of those proceedings. *See* Pet. 1–2.

B. The ’017 Patent

The invention of the ’017 patent “relates to a system for feeding pouches and spouts to an apparatus for processing same.” Ex. 1004, at [57]. The apparatus can be a rotary machine for inserting the spout into the pouch, sealing the spout, and filling the pouch. *Id.* at 2:49–56. The ’017 patent describes as objects of the invention the ability to continuously and

simultaneously feed pouches and spouts to a rotary machine, and to do so safely and without damage while enhancing productivity. *Id.* at 2:1–14.

Figures 1 and 2 are reproduced below:

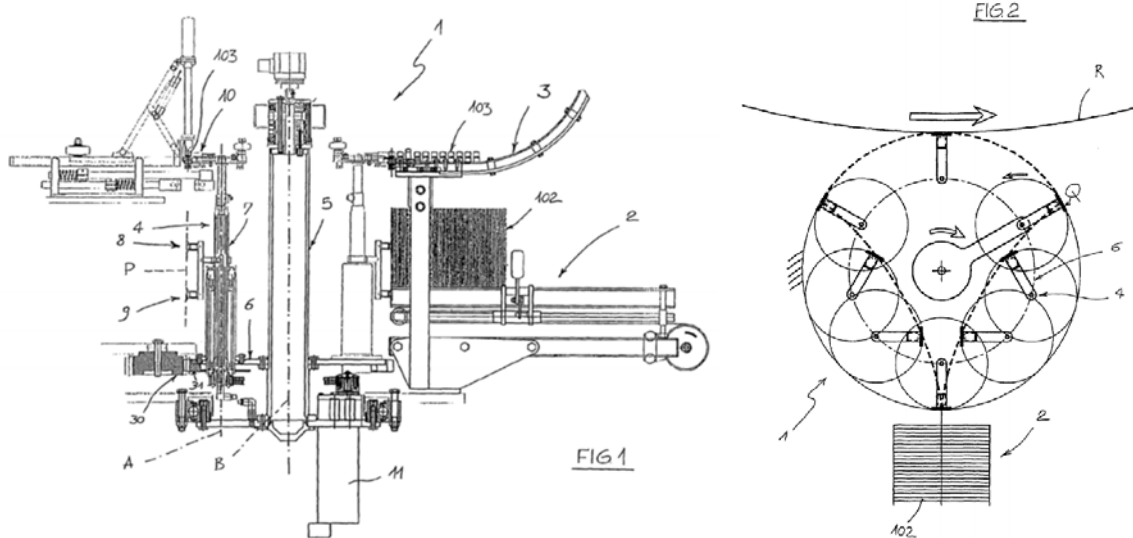


Figure 1 is a cross sectional view of system 1 for feeding pouches 102 and spouts 103 to a rotary machine. *Id.* at 2:40–42. Figure 2 is a schematic diagram of the operation of system 1. *Id.* at 2:43–44.

System 1 includes “transferring assembly 4 constructed and arranged to pick up a pouch 102 and a spout 103 from their respective magazines 2, 3” and transfer pouch 102 and spout 103 to a rotary machine. *Id.* at 3:5–9. Transferring assembly 4 is secured to rotating platform 6 connected to first support shaft 5, and also includes second support shaft 7. *Id.* at 3:10–13. Second support shaft 7 includes

a mechanism for picking up a pouch 102. Referring to the exemplary embodiment illustrated in FIG. 1, such a mechanism includes a pair of suction cups 8, 9 for grasping a pouch. . . . Also illustrated in the exemplary embodiment of FIG. 1 is a gripper 10 also connected to the second support shaft 7, the gripper 10 being constructed and arranged to grasp and retain a spout 103.

Id. at 3:20–29.

Simultaneous rotation of rotating platform 6 and support shaft 7 causes

suction cups 8, 9 and the gripper 10 [to be] moved by hypocycloid movement, traveling from the area where the pouches 102 and spouts 103 are picked up from their magazines 2, 3 to the area where the pouches and spouts are transferred to and released to the rotary machine for the processing of the pouches and spouts, indicated as R in FIG. 2.

Id. at 4:12–22. In Figure 2, “a top view of the trajectory of movement of the suction cups 8, 9 and the gripper is generally indicated as Q.” *Id.* at 4:23–25.

C. Illustrative Claim

Petitioners challenge claims 1–16, which are all of the claims of the ’017 patent. Claim 1, the sole independent claim, is reproduced below.

1. A system for providing pouches and spouts to an apparatus, the system comprising:
 - a plurality of pouches;
 - a plurality of spouts; and
 - a transferring assembly having a first gripping mechanism for grasping a spout and a second gripping mechanism for grasping a pouch constructed and arranged to simultaneously remove a single pouch from the plurality of pouches and a single spout from the plurality of spouts, the transferring assembly simultaneously transferring the single pouch and the single spout to an apparatus.

D. Alleged Grounds of Unpatentability

Petitioners contend that claims 1–16 of the ’017 patent are unpatentable on the following grounds:

References	Basis	Claims Challenged
Resterhouse ¹	§ 103	1–6, 14, and 16
Resterhouse and Sugihara ²	§ 103	7–9 and 11
Resterhouse, Sugihara, and Baclija ³	§ 103	10, 12, 13, and 15
Sugihara and Hiramoto ⁴	§ 103	1–9, 11–14, and 16

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs. LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation standard). Petitioners and Patent Owner each propose constructions for certain terms or phrases in the ’017 patent. *See* Pet. 9–10; Prelim. Resp. 9–13. However, upon review of the parties’ contentions and supporting evidence, we determine that no claim term requires construction for purposes of this Decision. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (“[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.”).

¹ U.S. Patent App. Pub. No. US2003/0216235 A1, published Nov. 20, 2003 (Ex. 1005, “Resterhouse”).

² Japanese Patent App. Pub. No. H10-202768, published Aug. 4, 1998 (Ex. 1006, “Sugihara”). Exhibit 1007 is an English translation of Sugihara.

³ U.S. Patent No. 6,651,800 B2, issued Nov. 25, 2003 (Ex. 1010, “Baclija”).

⁴ U.S. Patent App. Pub. No. US2002/0157348 A1, published Oct. 31, 2002 (Ex. 1008, “Hiramoto”).

B. Overview of the Asserted Prior Art References

1. Summary of Resterhouse

Resterhouse is directed to a container and spout assembly apparatus. Ex. 1005 ¶ 3. Resterhouse describes that flexible containers having rigid spouts have become popular, but that manufacturing them has been problematic because the conventional linear system of assembly is too slow to keep up with fill machines, and the slow rate of manufacturing increases the cost of a container. *Id.* ¶ 5. Resterhouse seeks to overcome those shortcomings. *Id.* ¶ 6. Figure 1 of Resterhouse is reproduced below.

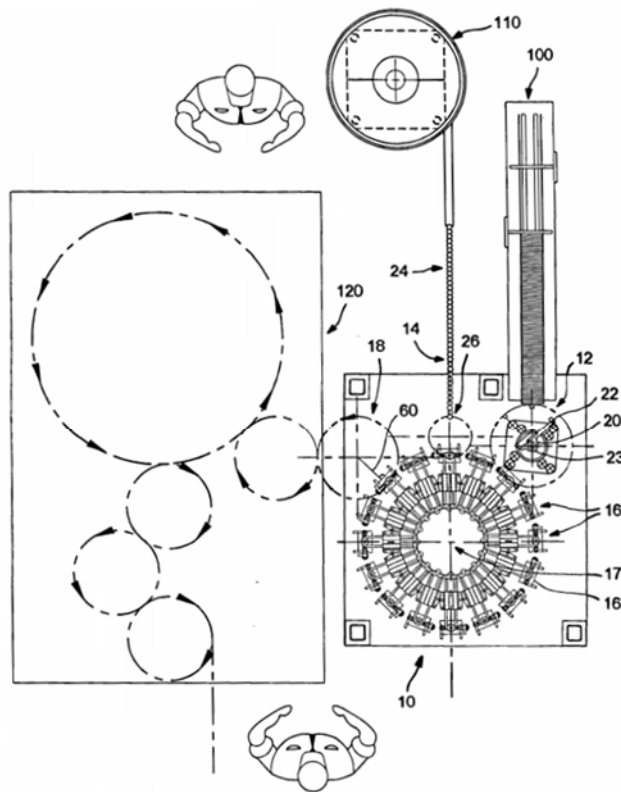


FIG. 1

Figure 1 is a top schematic view of container and spout assembly apparatus 10, container feed device 100, spout feed device 110, and fill device 120. *Id.* ¶¶ 28, 36. Apparatus 10 includes container introduction

station 12, spout introduction station 14, assembly stations 16 that rotate in unison about axis 17, and container removal station 18. *Id.* ¶ 38.

At container introduction station 12, moving arm 20, which includes gripper element 22, rotates about axis 23 from a first position proximate container feed device 100 to a second position proximate one of assembly stations 16. *Id.* ¶ 39. Gripper element 22 grasps the container at the first position and disengages the container at the second position. *Id.* Spout introduction station 14 includes supply container 24 and outlet 26. *Id.* ¶ 40. “Outlet 26 includes a means for aligning the exiting supply containers in a particular orientation so that the individual spouts can be transferred from the outlet to the assembly stations.” *Id.*

Figure 5, which is reproduced below, is a side view of assembly station 16', which Resterhouse explains is representative of the components included in other assembly stations 16. *Id.* ¶¶ 32, 41.

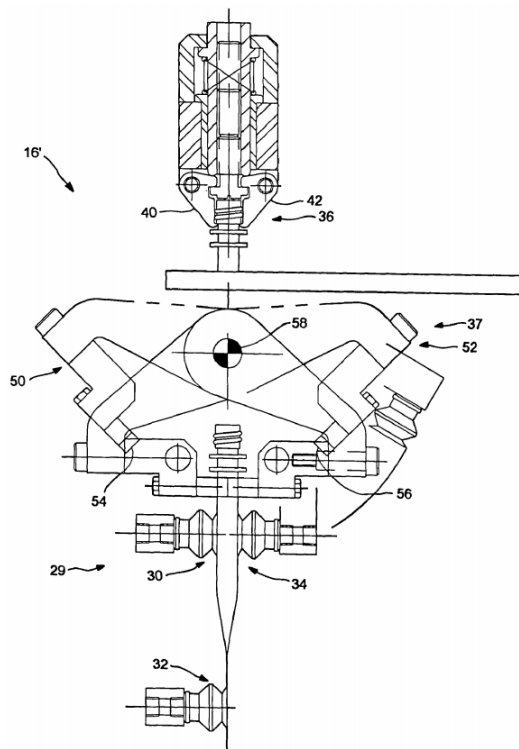


FIG. 5

As shown in Figure 5, assembly station 16' includes container manipulating assembly 29, spout grasping and positioning member 36, and joining assembly 37. *Id.* ¶ 42. Gripper members 30 and 32 of container manipulating assembly 29 are positioned on a first side of the container, and gripper member 34 is positioned on the opposite side. *Id.* Relative movement of gripper members 30 and 34 facilitates the opening of a portion of the container to permit insertion of the spout. *Id.* ¶ 43. Arms 40 and 42 of spout grasping and positioning member 36 grasp the spout from outlet 26 of spout introduction station 14. *Id.* ¶ 44. Joining assembly 37 includes joining arms 50 and 52, which rotate about axis 58 from a first disengaged position in which heating elements are positioned away from each other to a second engaged position in which the heating elements are positioned proximate to each other. *Id.* ¶ 45.

Resterhouse describes the operation of container and spout assembly apparatus 10 as follows:

[C]ontainers are grasped by the gripper element 22 of moving arm 20. The moving arm then rotates to a second position proximate the rotating assembly stations 16 wherein the container contacts gripper members 30 and 32 of the respective assembly station. These gripper members 30, 32 are then activated and the gripper element is released. Once gripper element 22 is released, moving arm 20 of container introduction station 12 rotates back to the first position to grip the next container and to repeat the introduction process.

At about the same time, spout grasping and positioning member 36, and in particular arms 40 and 42, engage a spout from outlet 26 of spout introduction station 14. The spout is then moved to a position wherein it can be interfaced with the container for eventual joining.

Id. ¶¶ 47–48. Next, gripper member 34 rotates to a container engaging position, and gripper members 30 and 34 move relative to each other to open a portion of the container. *Id.* ¶ 49. The spout is then positioned within the opening of the container, and joining member 50, 52 rotate to pinch the spout between the container walls and joining members 50, 52. *Id.* ¶ 50. Next, heating elements 54, 56 are activated to melt the container and spout together. *Id.* ¶ 51. Subsequently, the container is transferred from assembly station 16 to removal station 18. *Id.* ¶ 52.

2. Summary of Sugihara

Sugihara describes a manufacturing apparatus that seeks to increase the speed of manufacturing a container “so that a container body and spout are reliably and rapidly attached.” Ex. 1007, at [54], [57]. Figure 3 of Sugihara is reproduced below:

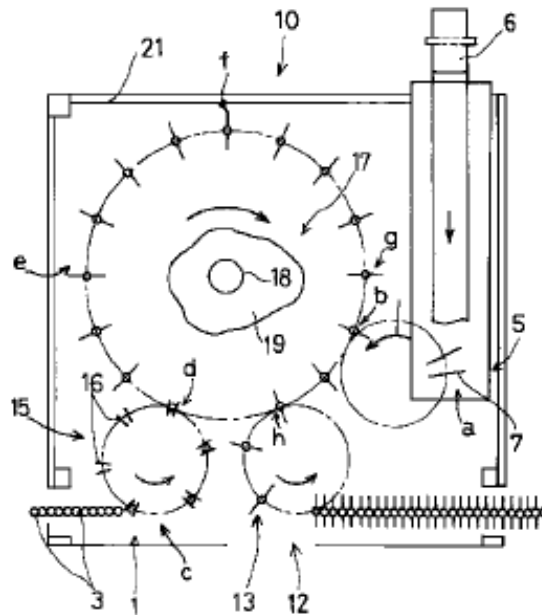


Figure 3 depicts “a schematic top view of the entire body including a partial cross section of the invention.” *Id.* ¶ 36. As seen in Figure 3, spout supply unit 1 successively transfers a plurality of spouts 3, and container

body supply unit 5 cuts film from continuous reel 6 into container body 7.
Id. ¶ 9. Container-forming unit 10 attaches spout 3 to container body 7 to form container 13, and discharge unit 12 discharges container 13. *Id.*
 Container-forming unit 10 includes rotary shaft 18, on which are positioned upper rotating table 19 and lower rotating table 20, as shown in Figures 1 and 2, reproduced below. *Id.* ¶ 11.

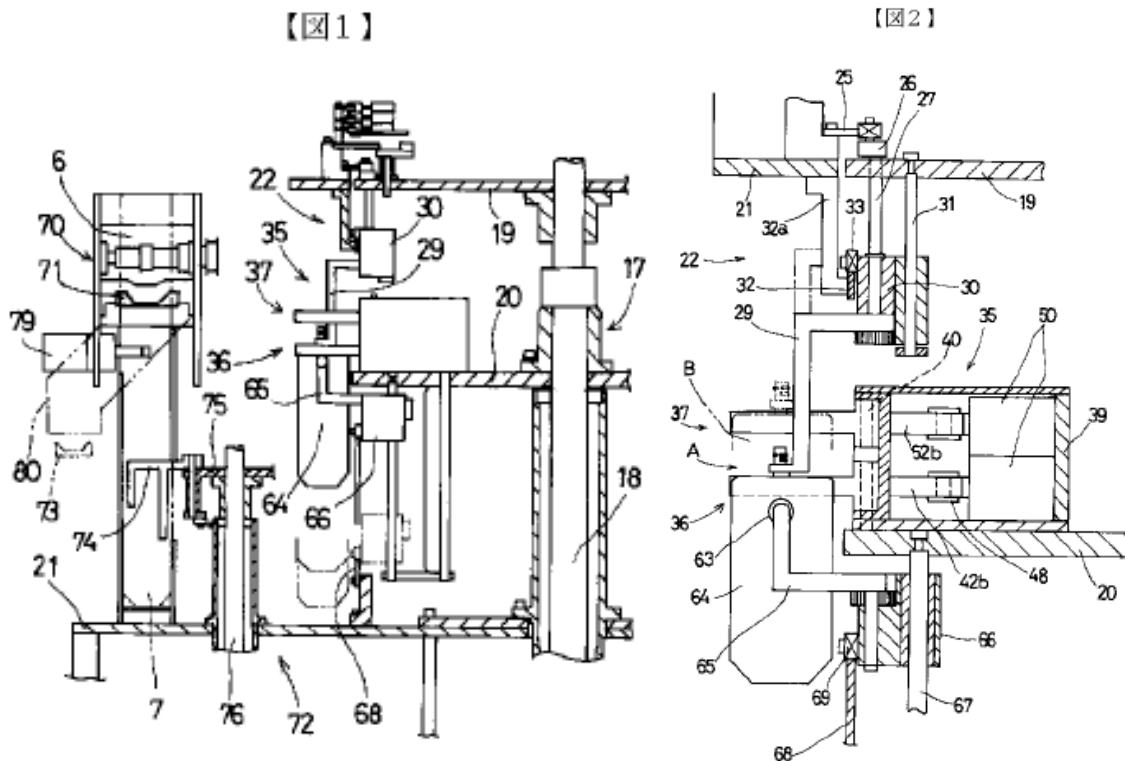


Figure 1 is a schematic cross-sectional front view, and Figure 2 is a partial cross-sectional front view. *Id.* ¶ 36. Spout claspers 22, which are installed in intervals in the periphery of upper rotating table 19, receive spout 3 from spout-receiving device 15. *Id.* ¶ 12. Annular cam 32, in conjunction with cam follower 33 and spout clamp 29, causes spout 3 to move vertically between a lower heating position A and an upper cooling position B. *Id.* ¶ 13. Sealing apparatus 35 includes heater means 36 to melt and fuse the upper edge of container body 7 and spout 3. *Id.* ¶ 14.

Container body opener apparatus 64 holds container body 7 and opens the upper edges thereof using openers 65 and suction unit 63. *Id.* ¶ 20.

Container body supply apparatus 72 includes rotation shaft 76 that rotates table 75. *Id.* ¶ 22. Container body 7, which is attached to suction unit 74, is received by opener 65 through the rotation of table 75. *Id.*

3. *Summary of Baclija*

Baclija is directed to a system that can reorient objects, such as pouches. Ex. 1010, at [57]. The portion of Baclija's disclosure on which Petitioners focus is the description of a rotary feeder in which "each pick up member has a path with four vertices, the pick up member and suction cups remaining outward facing and at each of the vertices the tangential velocity at the face of the suction cups will be substantially equal to zero." *Id.* at 10:53–57, Fig. 4.

4. *Summary of Hiramoto*

Hiramoto is directed to an apparatus that inserts and seals spouts in bags. Ex. 1008 ¶ 2. Hiramoto seeks to increase the processing rate in the manufacture of spout-equipped bags using a rotary apparatus. *Id.* ¶ 11. Specifically, Hiramoto teaches a method in which spouts are inserted and temporarily sealed, and then continuously transferred to a "spout main-sealing apparatus" for a main sealing operation. *Id.* ¶¶ 13, 16. According to Hiramoto, "[b]y thus performing the process up to and including temporary sealing and the process of main sealing, using separate rotors, it is possible to shorten the operating time per rotor, so that the rotational speed of the rotors can be increased." *Id.* ¶ 17. Moreover, the main sealing operation can be split into a primary and secondary sealing process, each performed by a separate apparatus. *Id.* ¶ 18. "By dividing the main-sealing process, which

requires the most operating time, into two processes, it is possible to increase the rotational speed of the rotors even further.” *Id.* Figure 1 of Hiramoto is reproduced below:

FIG. 1

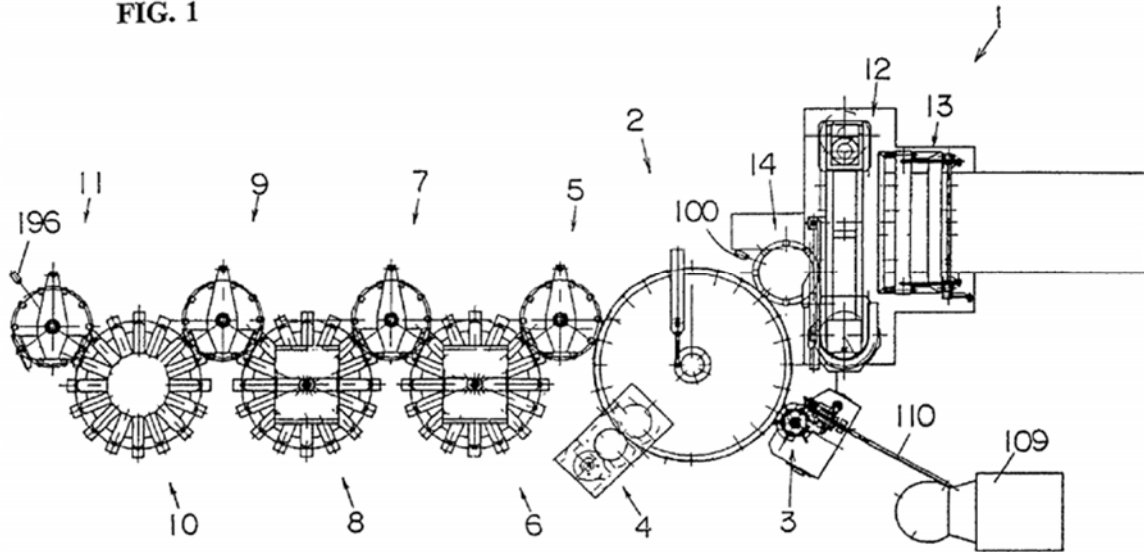


Figure 1 is a top view of the spout sealing apparatus. *Id.* ¶ 52. Spout insertion and temporary-sealing apparatus 2 receives bags from continuous bag supply device 1 and spouts from spout supply device 3. *Id.* The spouts are inserted into the bags and, in temporary-sealing apparatus 4, the bags and spouts are connected. *Id.* Rotating transfer apparatus 5 is interposed between temporary-sealing apparatus 2 and primary sealing apparatus 6. *Id.* “[S]econdary sealing apparatus 8 is disposed in this line with a rotating transfer apparatus 7 interposed, and a cold-sealing apparatus 10 is disposed in this line with a rotating transfer apparatus 9 interposed.” *Id.* Rotating transfer apparatus 11 transfers sealed bags with spouts attached to the apparatus of the next process. *Id.*

C. Obviousness Based on Resterhouse

Petitioners contend that claims 1–6, 14, and 16 are unpatentable under 35 U.S.C. § 103(a) as obvious over Resterhouse “in view of the knowledge

of a person of ordinary skill in the art.” Pet. 11.

1. Claim 1

Petitioners rely on Resterhouse’s flexible containers in container feed device 100 as disclosing the claimed “plurality of pouches” and Resterhouse’s spouts in spout feed device 110 as the claimed “plurality of spouts.” Pet. 13. With respect to the limitation of “a transferring assembly having a first gripping mechanism for grasping a spout and a second gripping mechanism for grasping a pouch,” Petitioners point to Resterhouse’s disclosure that container manipulating assembly 29 retains and manipulates the container, and that spout grasping and positioning member 36 grasps the spout from outlet 26. *Id.* at 14–15 (citing Ex. 1005 ¶¶ 8–9, 10–12, 42, 44, Fig. 5).

Petitioners further contend that Resterhouse teaches a transferring assembly that is “constructed and arranged to simultaneously remove a single pouch from the plurality of pouches and a single spout from the plurality of spouts,” as recited in claim 1, insofar as it “discloses that a container is grasped by a gripper element and then ‘[a]t about the same time’ spout grasping and positioning member 36 engages a spout.” *Id.* at 15 (citing Ex. 1005 ¶¶ 47–48; Ex. 1001 ¶ 64). Petitioners argue, with citation to the testimony of Dr. Witte, that an ordinarily skilled artisan

would have been motivated to modify the ‘at about the same time’ disclosure of Resterhouse to ensure that the removal of a pouch from the plurality of pouches and the removal of a spout from the plurality of spouts occurs simultaneously because simultaneous removal would increase the speed, yield, and overall efficiency of the machinery.

Id. at 16 (citing Ex. 1001 ¶ 65).

Finally, according to Petitioners, Resterhouse teaches that “the transferring assembly simultaneously transfer[s] the single pouch and the single spout to an apparatus,” as recited in claim 1, because Resterhouse discloses that spout grasping members engage a spout at about the same time as the container is transferred to gripper members 30, 32 of the assembly station, and the spout is then moved to a position wherein it can be interfaced with the container. *Id.* at 17 (citing Ex. 1005 ¶¶ 47–48). Petitioners contend that an ordinarily skilled artisan “would have been motivated to modify the ‘at about the same time’ disclosure in Resterhouse to simultaneous transfer because simultaneous transfer of the spout and pouch would increase the speed, yield and overall efficiency of the machinery for the same reasons stated above in reference to” the immediately preceding limitation. *Id.* (citing Ex. 1001 ¶ 67).

Patent Owner counters that Petitioners take inconsistent positions as to the portions of Resterhouse that satisfy different limitations of claim 1. Prelim. Resp. 23. In particular, with respect to the limitation that “the transferring assembly simultaneously transfer[s] the single pouch and the single spout to an apparatus,” Patent Owner asserts that Petitioners do not specifically identify what structure in Resterhouse constitutes the claimed “apparatus.” *Id.* According to Patent Owner, Petitioners’ discussion of the transfer between gripper element 22 to gripper members 30 and 32 in relation to that limitation suggests that Petitioners’ view is that the claimed “apparatus” is gripper members 30 and 32 or container manipulating assembly 29, or assembly station 16 of which they are a part. *Id.* However, Petitioners’ analysis of the “transferring assembly” limitation suggests that Petitioners rely on assembly station 16 as the “transferring assembly.” *Id.* at

23–24. Patent Owner argues that Petitioners’ discussion of dependent claim 16 adds further confusion, because there Petitioners rely on Resterhouse’s removal station 18 as the claimed “receiving device of the apparatus.” *Id.* at 24.

We agree with Patent Owner that the analysis in the Petition is unclear as to which portions of Resterhouse Petitioners rely on as teaching each element of claim 1. The rules governing this proceeding require that a petition “must specify where each element of the claim is found in the prior art patents or printed publications relied upon.” 37 C.F.R. § 42.104(b)(4). As the Federal Circuit has recently indicated, “[t]he Board is not free to disregard its own regulations.” *Perfect Surgical Techniques, Inc. v. Olympus America, Inc.*, ___ F.3d ___, 2016 WL 6694956 at *1 (Fed. Cir. Nov. 15, 2016). The Federal Circuit has also emphasized the need, in AIA proceedings, for petitioners to articulate their challenges with specificity in their initial petitions. *See Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (“It is of the utmost importance that petitioners in the IPR proceedings adhere to the requirement that the initial petition identify ‘with particularity’ the ‘evidence that supports the grounds for the challenge to each claim.’ 35 U.S.C. § 312(a)(3). . . . Unlike district court litigation—where parties have greater freedom to revise and develop their arguments over time and in response to newly discovered material—the expedited nature of IPRs bring with it an obligation for petitioners to make their case in their petition to institute.”).

In this case, the Petition’s arguments concerning claim 1 fall short of the requirements of § 42.104(b)(4) because the Petition does not link each element of the claim to a particular disclosure or structure in the reference on

which Petitioners rely. Specifically, it is unclear which portion of Resterhouse, in Petitioners' theory, discloses a "transferring assembly" and which portion discloses an "apparatus." The Petition's analysis of limitations that include those elements simply reproduces selected excerpts of Resterhouse without linking the structures described in the excerpts to each element of the claim. *See* Pet. 13–18.

Beyond not expressly articulating which features in Resterhouse correspond to the "transferring assembly" and the "apparatus," the Petition's analysis of claim 1 points in different directions as to how Petitioners map Resterhouse's disclosure onto these elements. As summarized above, in discussing the limitation that the transferring assembly includes a first gripping mechanism for grasping a spout and a second gripping mechanism for grasping a pouch, Petitioners rely on Resterhouse's container manipulating assembly 29 and spout grasping and positioning member 36. *Id.* at 14–15. Petitioners also reproduce Figure 5, a side view of assembly station 16', and point out that Resterhouse discloses that assembly station 16' includes container manipulating assembly 29 and spout grasping and positioning member 36. *Id.* at 15 (citing Ex. 1005 ¶ 42). This discussion suggests that Petitioners consider Resterhouse's assembly station 16 as corresponding to the claimed "transferring assembly."

Similarly, in discussing the limitation that the transferring assembly is arranged to simultaneously remove a single pouch from the plurality of pouches and a single spout from the plurality of spouts, Petitioners rely on Resterhouse's teaching that a container is grasped by gripper elements 30, 32 and then "[a]t about the same time' spout grasping and positioning member 36 engages a spout." *Id.* at 15 (citing Ex. 1005 ¶¶ 47–48). This

discussion likewise suggests that Petitioners consider assembly station 16 to be the claimed “transferring assembly,” because gripper elements 30, 32 and spout grasping and positioning member 36 are part of assembly station 16. *See* Ex. 1005 ¶ 42, Fig. 5.

However, Petitioners’ discussion of the limitation that the transferring assembly simultaneously transfers the single pouch and the single spout to an apparatus again relies on Resterhouse’s disclosure that spout grasping and positioning member 36 engages a spout at about the same time as the container is transferred from gripper element 22 to gripper members 30, 32 of assembly station 16. *See* Pet. 17 (citing Ex. 1005 ¶¶ 47–48). This discussion suggests that Petitioners consider assembly station 16 to be the claimed “apparatus.” Petitioners’ analysis of these three limitations is internally inconsistent. Petitioners do not provide any persuasive reason why assembly station 16 can be both the “transferring assembly” and the “apparatus” when claim 1 expressly recites that “the transferring assembly simultaneously transfer[s] the single pouch and the single spout to an apparatus.”

Petitioners’ arguments concerning the dependent claims further obscure which elements Petitioners link to which features in Resterhouse. In discussing claim 2, which recites that “the apparatus comprises a rotary machine,” Petitioners point to Resterhouse’s disclosure that assembly stations rotate about an axis. Pet. 18–19. This discussion indicates that Petitioners consider assembly station 16 to be at least part of the claimed “apparatus.” But that position conflicts with Petitioners’ arguments concerning claim 16, which recites that “the first and second gripping mechanisms move at substantially the same speed and direction as a

corresponding receiving device of the apparatus, the receiving device constructed and arranged to receive the spout and the pouch from the transferring assembly.” With respect to that claim, Petitioners argue that “[i]n Resterhouse, the corresponding receiving device is removal station 18.” Pet. 26. Resterhouse’s removal station 18 receives containers and spouts from assembly stations 16. Ex. 1005 ¶ 52, Fig. 1. It is inconsistent for Petitioners to argue that removal station 18 is the claimed “receiving device of the apparatus” that “receive[s] the spout and the pouch from the transferring assembly” while also arguing that assembly stations 16 are part of the “apparatus.”

Because Petitioners do not provide a coherent and consistent explanation of why each limitation of claim 1 would have been obvious based on Resterhouse’s disclosure, Petitioners have not shown a reasonable likelihood of prevailing in this challenge.

2. Claims 2–6, 14, and 16

Each of claims 2–6, 14, and 16 depend from claim 1. Petitioners’ arguments against these claims refer to and rely on the same contentions discussed in Section II.C.1. regarding the obviousness of claim 1 based on Resterhouse. See Pet. 18–25. Thus, for the same reasons discussed in Section II.C.1., Petitioners have not shown a reasonable likelihood of prevailing in showing that claims 2–6, 14, and 16 would have been obvious over Resterhouse.

D. Obviousness Based on Resterhouse and Sugihara

Petitioners contend that claims 7–9 and 11 would have been obvious based on Resterhouse and Sugihara. Pet. 26–37. Each of these claims depends, directly or indirectly, from claim 1. Petitioners’ arguments

concerning these claims refer to and rely on the same contentions discussed in Section II.C.1. regarding the obviousness of claim 1 based on Resterhouse. *See id.* at 27. Thus, for the same reasons discussed in Section II.C.1., Petitioners have not shown a reasonable likelihood of prevailing in showing that claims 7–9 and 11 would have been obvious based on Resterhouse and Sugihara.

E. Obviousness Based on Resterhouse, Sugihara, and Baclija

Petitioners contend that claims 10, 12, 13, and 15 would have been obvious based on Resterhouse, Sugihara, and Baclija. Pet. 37–44. Each of these claims depends, directly or indirectly, from claim 1. Petitioners’ arguments concerning these claims refer to and rely on the same contentions discussed in Section II.C.1. regarding the obviousness of claim 1 based on Resterhouse. *See id.* at 37–38, 43. Thus, for the same reasons discussed in Section II.C.1., Petitioners have not shown a reasonable likelihood of prevailing in showing that claims 10, 12, 13, and 15 would have been obvious based on Resterhouse, Sugihara, and Baclija.

F. Obviousness Based on Sugihara and Hiramoto

Petitioners contend that claims 1–9, 11–14, and 16 would have been obvious over Sugihara and Hiramoto. *See* Pet. 44–68.

1. Claim 1

Petitioners assert that both Sugihara and Hiramoto teach a plurality of pouches and a plurality of spouts. *Id.* at 45–48. In Sugihara, Petitioners point to container bodies 7 supplied from container body supply unit 5 as the claimed “pouches” and spouts 3 transferred from spout supply unit 1 as the claimed “spouts.” *Id.* In Hiramoto, Petitioners points to bags supplied by

continuous bag supply device 1 as the claimed “pouches” and spouts S provided from spout supply device 3 as the claimed “spouts.” *Id.*

Regarding “a transferring assembly having a first gripping mechanism for grasping a spout and a second gripping mechanism for grasping a pouch,” Petitioners again assert that each of Sugihara and Hiramoto teach this limitation. *Id.* at 47–48. In Sugihara, Petitioners point to spout-receiving device 15 with clamps 16 for gripping a spout and container body supply apparatus 72 with suction unit 74 for suctioning one side of container body 7. *Id.* (citing Ex. 1007 ¶¶ 10, 21–22). In Hiramoto, Petitioners point to the disclosure that “spouts S gripped by the spout gripping members 105 are introduced into . . . spout holding members 29” and transfer means 15 “which hold bags W by vacuum suction.” *Id.* at 48 (citing Ex. 1008 ¶¶ 54, 70).

Concerning a transferring assembly that is “constructed and arranged to simultaneously remove a single pouch from the plurality of pouches and a single spout from the plurality of spouts,” as recited in claim 1, Petitioners argue that it would have been obvious for an ordinarily skilled artisan “to combine the disclosures in Sugihara and Hiramoto to have an apparatus grasp and spout and pouch simultaneously” because doing so “would have improved the efficiency of the apparatus by increasing coordination between the transport of the spout and pouch.” Pet. 48–49.

Finally, regarding “the transferring assembly simultaneously transferring the single pouch and the single spout to an apparatus,” Petitioners rely on Sugihara’s disclosure that “[w]hen a spout 3 is held by the spout clamp unit 29 and a container body 7 is held by the respective opener 65, the spout 3 and the container body 7 are rotated to position e

shown in Figure 3 by rotating the upper rotating table 19 and the lower rotating table 20.” *Id.* at 49–50 (quoting Ex. 1007 ¶ 26). Petitioners argue that it would have been obvious to combine Sugihara and Hiramoto because both references seek to increase yield, speed, and efficiency, which “objectives can be accomplished through the adaptation of continuous rotary motion timed in coordination with downstream equipment for complete package make up.” *Id.* at 50.

Patent Owner counters that Petitioners do not identify a “transferring assembly” in either Sugihara or Hiramoto. Prelim. Resp. 35–37. Patent Owner also argues that Petitioners have not demonstrated the obviousness of simultaneous removal of a single pouch and a single spout, because neither of the cited references discloses that feature. *Id.* at 37–38. Moreover, according to Patent Owner, Petitioners have not explained how Sugihara would be modified to achieve such simultaneous removal, or why such a modification would have improved efficiency. *Id.* at 38–39.

We agree with Patent Owner that Petitioners have not demonstrated why the subject matter of claim 1 would have been obvious based on the combination of Sugihara and Hiramoto. As in the challenge based on Resterhouse, the Petition does not articulate what features in the references correspond to the claimed “transferring assembly” or the “apparatus.” Further, Petitioners’ view of which structures in the references correspond to those elements cannot readily be discerned from the arguments in the Petition.

Petitioners’ arguments quote selected excerpts in the references without linking the disclosed features to each element of the claims. For example, in discussing the limitation that the “transferring assembly ha[s] a

first gripping mechanism for grasping a spout and a second gripping mechanism for grasping a pouch,” Petitioners quote Hiramoto’s disclosure regarding the transfer from spout gripping member 105 to spout holding member 29 without clarifying which of those two components is alleged to be the “first gripping mechanism.” Pet. 47–48. With apparent but unstated reference to the claimed “second gripping mechanism,” Petitioners refer to Hiramoto’s disclosure that transfer means 15 hold bags W by vacuum suction. *Id.* at 48. Claim 1 requires that the first and second gripping mechanisms are part of the transferring assembly. Hiramoto’s spout gripping member 105 is part of spout supply device 3, spout holding member 29 is part of temporary-sealing apparatus 2, and transfer means 15 is part of transfer apparatus 14. Ex. 1008 ¶¶ 55–56, 68, 71, Figs. 1, 7A, 8. By simply repeating Hiramoto’s disclosure of spout gripping member 105, spout holding member 29, and transfer means 15 without linking them to particular claim elements, it is unclear what portion of Hiramoto Petitioners consider to be the claimed “transferring assembly.” Potential candidates appear to include Hiramoto’s transfer apparatus 14, spout supply device 3, temporary-sealing apparatus 2, or some combination thereof. Patent Owner and the Board should not be forced to speculate as to how Petitioners are reading the prior art on the challenged claims.

Petitioners’ analysis of the dependent claim does not clarify which features in the references correspond to the “transferring assembly” and the “apparatus.” For example, in discussing claim 2, Petitioners indicate that Sugihara’s rotary apparatus 17 is part of the claimed “apparatus.” Pet. 51–52. But in discussing claim 16, Petitioners appear to take the position that Sugihara’s discharge unit 12 is the “receiving device of the apparatus” that is

“constructed and arranged to receive the spout and the pouch from the transferring assembly.” Pet. 66–67. As shown in Sugihara’s Figure 3, discharge unit 12 receives containers and spouts from rotary apparatus 17. Petitioners’ arguments concerning these claims are inconsistent, and further impede understanding of how Petitioners link Sugihara’s disclosure to the claimed elements of the “transferring assembly” and the “apparatus.”

After reviewing Petitioners’ arguments and evidence, it is unclear what structures in either Sugihara or Hiramoto Petitioners rely on as the claimed “transferring assembly” or the “apparatus.” Accordingly, the Petition does not comply with the requirement to “specify where each element of the claim is found in the prior art patents or printed publications relied upon.” 37 C.F.R. § 42.104(b)(4).

We also agree with Patent Owner that Petitioners have not shown why it would be obvious, based on the disclosures of Sugihara and Hiramoto, for a transferring assembly to simultaneously remove a single pouch and a single spout. We note that in both references, pouch and spout removal are sequential, not simultaneous. Further, Petitioners do not explain what modifications would be made to either reference to accomplish simultaneous removal, nor do Petitioners provide a persuasive reason why a skilled artisan would make such a modification.

2. Claims 2–9, 11–14, and 16

Each of claims 2–9, 11–14, and 16 depend, directly or indirectly, from claim 1. Petitioners’ arguments against these claims refer to and rely on the same contentions discussed in Section II.F.1. regarding the obviousness of claim 1 based on Sugihara and Hiramoto. *See* Pet. 51–67. Thus, for the same reasons discussed in Section II.F.1., Petitioners have not shown a

reasonable likelihood of prevailing in showing that claims 2–9, 11–14, and 16 would have been obvious over Sugihara and Hiramoto.

III. ORDER

For the foregoing reasons, it is:

ORDERED that the Petition is denied as to all challenged claims of the '017 patent.

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